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| RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072 | | | COLLADO, CYNTHIA FRANCISCA | |
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Technology Center 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/710,349
Filing Date: July 02, 2004
Appellant(s): FULKS, LORI AMTHOR

Richard D. Fuerle
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 21, 2006 appealing from the Office
action mailed May 3, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|---------|--------|-----------|
| 6312048 | Kilmer | 11/6/2001 |
| 4290643 | Logan | 9/22/1981 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6,9-10,14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan (US Patent No.4, 290,643) in view of Kilmer (US Patent No.6, 312,048).

Regarding claims 1 and 17 Logan discloses a collapsible chair having two front legs without wheels (see figure 1, element 26), two back legs (see figure 1, element 25), a flexible seat (see figure 1, element 1), a flexible back (see figure 1, element 22), and an armrest on each side of the seat (see figure 1, element 23), flexible material between the seat and each arm rest (figure 1, elements 23 and 1) and between the seat (see figure 1, element 23) and the back (see figure 1, element 22), that prevents items placed on the seat from falling off the seat when the chair is tipped and pulled, a lock for securing the chair in an open position or in a collapsed position (see figure 2, element 13). Logan lacks the teaching of wheels and a handle, however Kilmer discloses at least one wheel attached behind the bottom of each back leg so that the wheels do not bear the weight of the chair except when the chair is tipped (see figure 1a, element 20), Kilmer also discloses a handle attached the top of the chair (see figure 1a, element 14), whereby the chair can be tipped and pulled by the handle with the weight of the chair

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borne by the wheels (see figure 1b, element 20) when the chair is in an open or collapsed position (see figure 1b). Based on the teaching of Kilmer, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the collapsible chair of Logan to include a handle and wheels behind the rear legs as in Kilmer so as to make it easier to the user when transporting the chair from one location to the other.

Regarding claim 2, Kilmer discloses dual wheels except for a single wheel attached to the bottom of each leg. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach a single wheel to the bottom of each leg, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art.

Regarding claim 3, Kilmer discloses dual wheels attached to the bottom of each back leg (see figure 1, element 20).

Regarding claim 4, Logan teaches flexible material is netting (see figure 1, element 23).

Regarding claim 5, Kilmer teaches a lock for holding the chair in a collapsed or open position (see figure 1b, elements 40 and 41).

Regarding claim 6, Kilmer teaches the handle attached to both sides of the chair (see figure 1).

Regarding claim 9, Logan teaches a flexible seat and flexible back made of fabric (figure 1, element 23).

Regarding claim 10, Logan teaches tubular legs and made of steel or aluminum (see figures 4 and 5).

Regarding claim 14, Logan discloses the claimed invention having openings in the netting, but does not provide scale. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the opening of the netting about one fourth to about three fourth inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 15, Logan discloses the netting attached to the back of the chair (see figure 1, element 22).

Regarding claim 16 and 18, Under the principles of inherency, if a prior art device, in its normal and usual operation, would be necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324,231 USPQ 136 (Fed. Cir. 1986).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, 3rd (US Patent No.4, 290,643) in view of Kilmer'048 (US Patent No.6, 312,048) and further in view of Examiner's Official Notice.

Regarding claim 8, Logan and Kilmer lack the teaching of item on the seat of a collapsible chair and pulling the chair by the handle, Examiner is taking official notice

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that it is common knowledge to one of ordinary skill in the art to include an item on the seat of a collapsible chair and pulling the chair by the handle making it easier on the elderly to haul. (See section 2144.03 of MPEP)

(10) Response to Argument

Appellant argues that Logan does not teach an armrest on each side of the seat, however examiner does not concede because it's recognizable that element 23 can be used to support an arm and therefore one can rest one's arms on the top edge of element 23.

Appellant argues that Logan does not teach flexible material that prevents objects placed on the seat from falling off when the chair is pulled, however examiner does not agree with the appellant for the reason that Logan's flexible material is capable of performing the exact same process as the applicants collapsible chair, for example one can place a sweater on the chair, then close it and haul the chair away with the sweater in between the collapsed chair.

Appellant argues that the Logan reference does not teach a seat, a back and arm rest as separate elements, however examiner disagrees with applicant in which the seat (fig 1, element 1), a flexible back (fig 1, element 22) and an armrest on each side (fig 1, element 23) are all separated by compression members viewed in figure 1 and discussed in column 2, lines 8-68.

In response to applicant's argument that it would not be obvious to modify "Logans chair to include a handle and wheels behind the rear legs as in Kilmer", the references must

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explicitly provide a suggestion for combining, a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference (see *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)), with skill being presumed on the part of the artisan, rather than the lack thereof (see *In re Sovish* 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1985)); further, references may be combined although none of them explicitly suggests combining one with the other (see *In re Nilssen* 7 USPQ2d 1500 (Fed. Cir. 1989)). It has long been the law that the motivation to combine need not be found in prior art references, but equally can be found "in the knowledge generally available to one of ordinary skill in the art." *In re Jones*, 958 F.2d 347, 351 (Fed. Cir. 1992) (Citing *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988)).

The motivation to combine can be found either in a prior art reference, or it can be implicit in the knowledge of one of ordinary skill in the art. See *In re Huston*, 308 F.3d 1267, 1280 (Fed. Cir. 2002); *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1472 (Fed. Cir. 1997).

Sources suggesting a combination may be: (1) the combined teachings of the prior art, (2) the knowledge of the ordinary practitioner and (3) the nature of the problem to be solved. "The test for implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would

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have suggested to those of ordinary skill in the art." In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed.Cir. 2000).

In Richard Ruiz and Foundation Anchoring Systems, Inc. v. A.B. Chance Company, No. 03-1333 (Fed. Cir. January 29, 2004), the court emphasized that an "express written teaching in the art" to combine references was not required [emphasis added]. Rather, motivation may come from "the nature of a problem to be solved, leading inventors to look to references relating to possible solutions to that problem."

Please further note the following from Section 2144 of the MPEP: "The rationale to modify or combine the prior art does not have to be expressly stated in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent...The reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem...It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by Applicant." Also Chief Judge Nies writes in a concurring opinion, "While there must be some teaching, reason, suggestion, or motivation to combine existing elements to produce the claimed device, it is not necessary that the cited references or the prior art specifically suggest making the combination...In sum, it is off the mark for litigants to argue, as many do, that an invention cannot be held to have been obvious unless a suggestion to combine prior art teachings is found in a specific reference". See In re Oetiker 977 F.2d 1443, 24 USPQ.2d 1443 (Fed.Cir.1992).

Appellant argues that Logan does not teach a lock for securing the chair in fig 2, element 13, however examiner disagrees with applicant. Examiner interprets element 13 to serve as a locking device for the reason that it maintains the chair opened in a locked position hence serves as a lock.

Furthermore in regards to Kilmer, applicant argues that figure 1b, element 40 and 41 is not a lock, its considered a bungee cord, however examiner disagrees with applicant because the bungee cord in the Kilmer reference serves as a locking mechanism. Examiner directs applicant to figure 1b, elements 40 and 41 in where the collapsible chair is being held closed by the bungee cord hence serves as a lock. Examiner also directs applicant to column 4, lines 20-34.

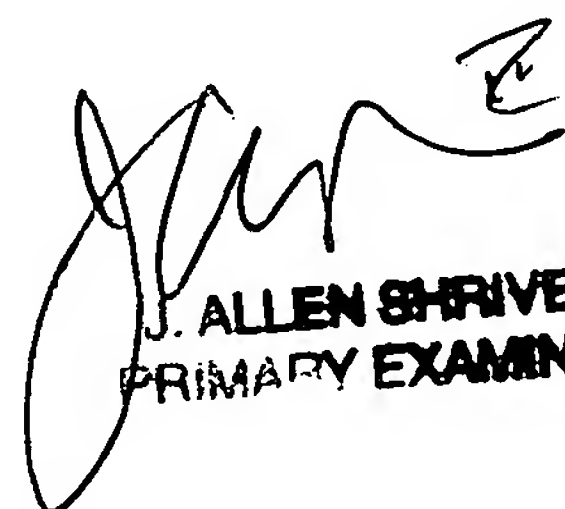
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully Submitted,



Cynthia F. Collado AU 3618


J. ALLEN SHRIVER
PRIMARY EXAMINER

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Conferees:

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